IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

ORDER

Arun Kumar Dashora Vs. The Urban Improvement Trust and another

D.B.CIVIL SPECIAL APPEAL(WRIT) NO.444/2005

Against the order dated 02.09.2005 passed by the learned Single Judge in S.B. Civil Writ Petition No.2747/2005

Date of order : 8th May, 2006

PRESENT

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE DINESH MAHESHWARI

Shri P.S.Bhati for the appellant

BY THE COURT: (Per Hon'ble Maheshwari, J.)

This intra-court appeal is directed against the order dated 02.09.2005 passed by the learned Single Judge dismissing summarily the writ petition filed against the order dated 19.02.2005 passed by the Permanent Lok Adalat, Udaipur dropping the proceedings sought to be maintained by the petitioner-appellant against the Urban Improvement

Trust, Udaipur ('UIT' for short) on a dispute in relation to allotment of a plot of land.

The petitioner-appellant submitted an application (Annex.1) under Section 22C of the Legal Services Authorities Act, 1987 ('the Act' hereafter) on 13.12.2004 before the Permanent Lok Adalat, Udaipur with the averments that he made an application for allotment of a plot in Daitya Magri Scheme of the UIT on 31.12.1971; that because of the ban imposed by the Government, the allotment process was kept in abeyance till the year 1980; that 2500 sq.ft. of land was allotted to him; that he deposited Rs.7,390/- on 14.05.1982 and further deposited the amount of penalty of Rs.3,118.60 on 07.10.1982 and sought possession of the allotted land. According to the petitioner, an employee of the UIT reported on 15.01.1983 that the allotted plot No.24B was not available at site and thereafter the petitioner sought allotment of alternative piece of land and thereupon he was allotted 1800 sq.ft of land in plot No.13 of Moti Magri Scheme. The petitioner contended that he had deposited amount with penalty towards allotment of 2500 sq. ft. of land and it was the responsibility of the UIT to allot him 2500 sq. ft. of land but the remaining 700 sq.ft. of land was not allotted to him.

The petitioner raised the grievance that in the year 1999 the non-applicant-UIT proposed to make payment of 700 sq.ft. of land @ Rs.3.15 per sq.ft. The petitioner stated that for 22 years, he had visited the office of UIT several times and addressed various communications and gave out

the dates of such communications from 31.12.1971 to 03.06.2000. In paragraph 7 to 11 of the application, the petitioner made the prayers in the manner that Rs.5,60,000/- towards cost of 700 sq.ft. of land at the present market rate be paid to him; that he may be allotted any other plot of equal value; that for the agony suffered by him Rs.15,000/- be awarded as damages; that the negligence of the authorities be determined and the amount of damages be recovered from their salary. In relation to the maintainability of the application and jurisdiction of the Lok Adalat, the petitioner averred that in view of the amendment to the Act of 1987, application could be maintained against the State, therefore, the Lok Adalat has jurisdiction to entertain the application and the cause of action has arisen within its territorial jurisdiction.

The non-applicant Urban Improvement Trust, in its preliminary objections (Annex.2) pointed out that the petitioner has earlier raised this dispute in the same court in case No.318/2001 that was rejected on 14.02.2003; and contended that the petitioner has raised the same dispute after 22 months without any justification. It was also contended that the petitioner has concealed these facts and filed the fresh application that was not maintainable. It was also submitted that the dispute sought to be raised does not come within the purview of the Lok Adalat; that the petitioner has already obtained the land and raised construction; and that the non-applicant-UIT was prepared to make payment towards the

difference of the area of land and the petitioner has already been informed of the same.

The learned Permanent Lok Adalat seems to have taken up the matter for conciliation and failing the settlement, by the impugned order dated 19.02.2005 (Annex.3), dropped the proceedings leaving the parties free to take recourse to appropriate remedy.

In the writ petition submitted to this court, the petitioner contended that the action on the part of the non-petitioner-UIT being wholly illegal and arbitrary, he had approached the Lok Adalat bona fide and the Lok Adalat was not justified in not deciding the issue leaving the parties to choose appropriate remedy.

It appears from the record of S.B. Civil Writ Petition No.2747/2005 that the learned Single Judge on 24.08.2005 directed the petitioner to produce the terms of allotment of plot No.13. However, no such terms of allotment pertaining to plot No.13 seem to have been put on record. Be that as it may, in view of the indisputable fact that the petitioner had earlier initiated similar proceedings in case No.318/2001 that was dismissed on 14.02.2003, the learned Single Judge was of opinion that the claim made by the petitioner before the Permanent Lok Adalat could not be maintained as a litigant cannot be conceded a right to successively approach the Permanent Lok Adalat for the same grievance. Learned Judge further considered the sustainability of claim as sought to be made by the petitioner and found that it were obviously a stale claim. In the totality of

circumstances, learned Judge found that the Lok Adalat has rightly declined to entertain the case on merits and, therefore, dismissed the writ petition summarily.

It may be pointed out that though no such disclosure was made in the writ petition about the nature of previous proceedings, it has been stated in the memo of present appeal that earlier were the proceedings not before the Lok Adalat but of a complaint filed by the petitioner before the District Forum Consumer Protection, Udaipur being complaint No.318/2001 that was dismissed for default of appearance. The petitioner-appellant was granted time on 09.01.2006 to file affidavit enclosing copy of the order passed in the previous proceedings. The petitioner-appellant has chosen not to file any affidavit, however, photostat of the order dated 14.02.2003 passed by the District Forum Consumer Protection, Udaipur has been placed on record.

Assailing the orders passed by the learned Single Judge and by the Permanent Lok Adalat, learned counsel Shri P.S. Bhati strenuously contended with reference to Sub-section (8) of Section 22C of the Act that when the parties failed to reach a settlement, it was incumbent for the Permanet Lok Adalat to have decided the dispute and the proceedings could not have been dropped. Learned counsel further submitted that the consideration adopted by the learned Single Judge that it were a stale claim are not correct inasmuch as the petitioner has shown that the matter was under active consideration of the parties for all these years.

Having heard learned counsel for the appellant, having perused the record and having examined the law applicable to the case, we are clearly of opinion that this appeal remains absolutely bereft of substance and the course of litigation sought to be adopted by the petitioner is fundamentally lacking in bonafide apart from being wholly incompetent.

The petitioner-appellant, while seeking to maintain the application before the Permanent Lok Adalat, did not state anything about the previous litigation and the fact regarding previous litigation was divulged only by the non-petitioner-UIT. It appears that while raising such preliminary objection, the UIT stated that case No.318/2001 was earlier filed before the same court; and the petitioner has taken a ground in the present appeal that he had only filed a complaint before the District Forum Consumer Protection, Udaipur. However, substance of the matter remains that the petitioner did take up the litigation earlier and consciously omitted to state in his application the facts regarding such complaint filed by him before the District Forum relating to the same dispute. These facts concerning the previous litigation were sought to be avoided in the writ petition also. With his attempts to avoid the facts concerning previous litigation, the petitioner by his conduct has created a big question mark over his bona fide.

Apart from his questionable conduct, for the admitted fact that the petitioner did take up the proceedings earlier before the District Forum, we are clearly of opinion that the proceedings before the Permanent Lok Adalat, Udaipur were fundamentally incompetent.

An application to the Permanent Lok Adalat could be made only before the dispute is brought before any court and not afterwards. Sub-section (1) of Section 22C itself provides, -

> "Any party to a dispute may, **before the dispute is brought before any court,** make an application to the Permanent Lok Adalat for the settlement of dispute:"
>
> (emphasis supplied)

Court has been defined in Section 2(1) (aaa) of the Act thus, -

> "Court" means a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions;"

Obviously, the District Forum established under Section 9 of the Consumer Protection Act, 1986 is a court for the purpose of the Act of 1987 in view of the comprehensive and all inclusive definition aforesaid. A dispute could be brought for cognizance by the Permanent Lok Adalat only before it has been brought to any court. The present dispute having admittedly been brought before the District Forum way back in the year 2001 and having already failed by dismissal on 14.02.2003, it could not have been brought before the Permanent Lok Adalat at all. In this view of the matter, the Permanent Lok Adalat cannot be said to have committed any illegality or irregularity in dropping the incompetent proceedings.

Even on prima facie merits of the case, the observation by the learned Single Judge that the petitioner's was a stale claim cannot be said to be

inapt. Admittedly, the petitioner was allotted alternative plot measuring 1800 sq.ft. in the year 1986; and if at all he had any claim for the remaining 700 sq.ft. of land, the cause of action accrued that very moment in the year 1986. Mere incessant correspondence thereafter would not provide the petitioner with any so-called continuing cause of action. Further, for the sake of arguments, even if the submissions of the petitioner be taken into consideration that he was offered the amount of Rs.2,205/- in the year 1999 by the UIT and that invested him with any cause of action, we are of opinion that even on that basis, an action could not have been brought for recovery of the market value of 700 sq.ft. land or for alternative land or for damages on 13.12.2004, as made before the Permanent Lok Adalat.

Viewed from any angle, we are satisfied that the proceedings before the Permanent Lok Adalat being wholly incompetent, have rightly been dropped and the learned Single Judge has rightly rejected the writ petition. This appeal remains totally bereft of substance and deserves to be dismissed.

The appeal is, accordingly dismissed summarily.

(DINESH MAHESHWARI),J. (S.N.JHA),CJ.

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